Supreme Court, U.S.
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(5)

No. 96-651

In the Supreme Court of the United States

OCTOBER TERM, 1996

JAMES E. GILBERT, ET AL.,
Petitioners

vs.

RICHARD J. HOMAR,
Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JOINT APPENDIX

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Petition for Certiorari Filed October 18, 1996
Certiorari Granted January 3, 1997

85 pp

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RELEVANT DOCKET ENTRIES

Date	No.	Proceedings
1993		
6/7	1	Complaint filed
9/7	15	Answer filed
1994		
1/18	19	ESU's motion for summary judgment and statement of material facts filed
2/1	20	ESU's brief in support of motion for summary judgment filed
2/1	21	ESU's statements in support of motion for summary judgment
2/16	22	Homar's response to ESU's statement of material facts filed
2/16	23	Homar's brief in opposition to ESU's motion for summary judgment filed
3/14	32	ESU's reply brief filed
1995		
3/17	34	Memorandum and Order dated 3/17/95 that ESU's motion for summary judgment is granted filed

3/17	35	Judgment entered in favor of ESU officials and against Homar
4/14	36	Homar's notice of appeal filed
4/20		Homar's appeal docketed by Third Circuit
6/20		Homar's brief filed in Third Circuit
6/20		Homar's appendix filed
7/24		Brief of ESU officials filed in Third Circuit
1996		
7/18		Published opinion filed. Judge Alito filed opinion concurring in part and dissenting in part.
7/18		Judgment filed affirming in part, reversing in part and remanding
8/16		Motion of ESU officials to stay mandate filed
9/3		Order granting motion to stay the mandate
9/9		Mandate issued, filed
10/30		Supreme Court of U.S. notice filed advising that petition for writ of certiorari filed. Filed in Supreme Court on 10/16/96 at Supreme Court case no. 96-651

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	
Plaintiff	:	**NO. 3:CV-93-0852**
v.	:	
	:	
JAMES E. GILBERT, et al.	:	**JURY TRIAL**
Defendants	:	**DEMANDED**

COMPLAINT

AND NOW, comes Richard J. Homar by his attorneys, Newman, Williams, Mishkin, Corveleyn, Wolfe & Fareri, P.C., and files the following Complaint against Defendants:

1. This is a civil action seeking damages and equitable relief against Defendants for committing acts, under color of law, which deprived Plaintiff of well settled rights, privileges and immunities secured under the Constitutional laws of the United States. The acts were perpetrated by James E. Gilbert, President of East Stroudsburg University, Gerald Levanowitz, East Stroudsburg University Director of Human Resources, David Marazas, East Stroudsburg University Police Chief, and Curtis English, Vice

President of East Stroudsburg University, all acting in their official and individual capacities. By committing the acts stated herein, Defendants have denied Plaintiff his right to substantive and procedural due process and breached his contract of employment with East Stroudsburg University as a police officer.

2. This Court has jurisdiction of this action under 42 U.S.C.A. §1983, 28 U.S.C. §1343 and 28 U.S.C. §1331.

3. Plaintiff is a citizen of the United States of America and a resident of 421 King Street, East Stroudsburg, Pennsylvania 18301.

4. Defendant James E. Gilbert is a resident and citizen of the Commonwealth of Pennsylvania who is the President of East Stroudsburg University and maintains an office at the Jeanette Reibman Building, Prospect and Normal Streets, East Stroudsburg, Pennsylvania 18301.

5. Defendant Gerald Levanowitz is an adult individual and resident of Pennsylvania who is Human Resource Director at East Stroudsburg University and maintains an office at the

Jeanette Reibman Building, Prospect and Normal Streets, East Stroudsburg, Pennsylvania 18301.

6. Defendant David Marazas is an adult individual and resident of Pennsylvania who is the East Stroudsburg University Police Chief who maintains an office at Prospect Street, East Stroudsburg, Pennsylvania 18301.

7. Curtis English is an adult individual and resident of Pennsylvania who is the Vice President of East Stroudsburg University who maintains an office at the Jeanette Reibman Building, Prospect and Normal Streets, East Stroudsburg, Pennsylvania 18301.

8. On or about June 16, 1989, Plaintiff had been hired by East Stroudsburg University as a Groundskeeper and he worked in such capacity for four (4) years.

9. Plaintiff applied for the position of Police Officer at East Stroudsburg University and was hired on February 10, 1992 and was placed on a probationary period for six (6) months.

10. On or about August 10, 1992 Plaintiff's probationary period had concluded.

11. During the probationary period Plaintiff had become a member of the International Union, United Plant Guard Workers of America Local 506 and Plaintiff and Defendants were subject to the agreement between the Commonwealth of Pennsylvania and the International Union, United Plant Guard Workers of America.

12. On or about August 26, 1992, Plaintiff was arrested by members of the Pennsylvania State Police Region I Strike Force and Troop "N" Vice and Narcotics Unit upon the execution of a search warrant for the residence located at Lake Valhalla, Smithfield Township, Monroe County, Pennsylvania.

13. Plaintiff was charged with possession, delivery of marijuana and criminal conspiracy.

14. As per letter dated August 27, 1992 Plaintiff was notified that effective immediately on August 26, 1992 he was suspended without pay as a Police Officer at East Stroudsburg University pending further investigation and disposition of the charges filed on August 26, 1992.

15. On August 28, 1992, Gerald Levanowitz, East Stroudsburg University Director of Human Resources, made a statement to the media that he and campus police were investigating the charges against Plaintiff.

16. By way of letter dated August 28, 1992 Levanowitz notified the Plaintiff that he was suspended without pay, without hearing, without an opportunity to be heard or to otherwise confront his accusers.

17. On September 1, 1992 a hearing was held before the District Justice, Charles Eyer, and upon the conclusion of the proceeding District Justice Eyer ruled that there was insufficient evidence to hold Plaintiff for trial and dismissed all charges.

18. Plaintiff in accordance with United Plant Guard Workers of America collective bargaining agreement grieved the suspension.

19. On September 18, 1992 an informal meeting was held before Gerald S. Levanowitz, Director of Human Resource Management, David Marazas, Chief of Police, Richard Connel,

International Union, United Plant Guard Workers of America Representative and Plaintiff.

20. Plaintiff had been advised by Levanowitz prior to the date of the meeting of September 18, 1992 that he could not bring his attorney.

21. Without Plaintiff's counsel being present, Levanowitz informed Plaintiff that it was in his best interest to answer all questions in order to regain his position with the Campus Police Department and he should discuss what had happened the day of the arrest. Plaintiff provided a statement of the event at such time.

22. By way of letter dated September 23, 1992, and without any further investigation, Plaintiff was informed by Levanowitz that he was demoted from his position as Police Officer I in the Campus Police Department to the position of Groundskeeper, a position formerly held by Plaintiff and said action became effective retroactive to August 26, 1992.

23. As per letter dated September 24, 1992, James E. Gilbert, President of East Stroudsburg University, sustained

the recommendations of the Police Chief Marazas, Director Levanowitz and Vice President English.

24. On or about September 30, 1992 David A. Pottiger, Vice President of Amalgamated Local Union No. 506 forwarded a letter to William C. Hamilton of the State System of Higher Education, Commonwealth of Pennsylvania, filing the grievance on behalf of Plaintiff pursuant to the Collective Bargaining Agreement.

25. On or about October 6, 1992 William C. Hamilton, in response to the grievance requested an extension of time and by way of letter dated October 12, 1992, Pottiger responded that in accordance with the contract fifteen (15) working days were sufficient for the investigation to be conducted.

26. On or about November 13, 1992 a letter was forwarded to Pottiger denying the grievance on the basis of their investigation.

27. On or about November 16, 1992 Pottiger submitted the matter to Clair Kenyon, Bureau of Labor Relations in

accordance with step 4 of the grievance procedure of the union contract.

28. On or about December 18, 1992 Kenyon responded denying the grievance at step 4 based on the report completed on August 27, 1992, a day after the arrest by Trooper Richard Raab of the Pennsylvania State Police.

29. In accordance with the collective bargaining agreement whereby step 4 of the grievance procedure was not met a letter was forwarded to the President of Local 506 requesting that the grievance be submitted for arbitration.

30. On or about January 11, 1993 Dennis Eck, President of Local 506, forwarded a letter to the Grievance Division, Bureau of Labor Relations, Harrisburg, PA, demanding to advance to arbitration concerning the matter and suggesting arbitrators for consideration of this grievance.

31. By way of letter dated February 8, 1993 Dennis Eck, President of Local 506, informed the Vice President that the grievance was withdrawn from arbitration and no further action would be taken on this matter.

32. At the time Plaintiff was advised on August 27, 1992 that he would be suspended without pay no hearing was conducted.

33. The subsequent action taken by Gerald Levanowitz, Director of Human Resource Management, in demoting Plaintiff to the position of Groundskeeper on the basis of statements made to the State Police at the time of his arrest and for which Plaintiff was subsequently cleared is false and stigmatizing.

34. The grievance request was denied before the Bureau of Relations where the report prepared by the police was given credence and whereby Plaintiff was not allowed to question the officer as to the accuracy of his statements.

35. In accordance with the contractual agreement between the Commonwealth of Pennsylvania and the International Union, United Plant Guard Workers of America has exhausted all grievance procedures.

36. Plaintiff's demotion to Groundskeeper and Defendant's failure to reinstate Plaintiff as a police officer seriously damaged his standing or association in the community whereby

Plaintiff, who has been cleared of all charges, continues to be stigmatized by Defendants' action.

37. The acts described herein and committed by Defendants James E. Gilbert, Gerald Levanowitz, Curtis English, David Marazas were committed either by motive or intent and/or with reckless or callous indifference to Plaintiff's federally protected rights.

COUNT I

PROCEDURAL DUE PROCESS

RICHARD J. HOMAR VS. JAMES GILBERT, GERALD LEVANOWITZ, DAVID MARAZAS AND CURTIS ENGLISH

38. Paragraphs 1 through 37 are incorporated by reference herein and made part hereof.

39. On August 26, 1992 Defendants James Gilbert, Gerald Levanowitz, David Marazas and Curtis English agreed and conspired to suspend Plaintiff without pay, without hearing, without notice, without an opportunity to be heard and without other procedural guarantees as set forth under the

Pennsylvania Constitution and the Fourteenth Amendment to the United States Constitution.

40. As a consequence thereof, Plaintiff was denied valuable property and liberty without procedural due process.

WHEREFORE, Plaintiff requests your Honorable Court to award the following relief:

A. To order that Plaintiff be reinstated to the position of police officer with East Stroudsburg University Police Force;

B. To award Plaintiff back pay;

C. To award Plaintiff reasonable counsel fees;

D. To award Plaintiff damages in an amount in excess of Fifty thousand ($50,000.00) Dollars due to the abridgement of his constitutional rights as above described; and

E. Any other relief your Honorable Court deems appropriate under the circumstances.

COUNT II

SUBSTANTIVE AND PROCEDURAL DUE PROCESS

RICHARD J. HOMAR VS. JAMES GILBERT, GERALD LEVANOWITZ, DAVID MARAZAS AND CURTIS ENGLISH

41. Paragraphs 1 through 40 are incorporated herein by reference and made part hereof.

42. Defendants named herein above in their official and individual capacities deprived Plaintiff of liberty and property and further violated substantive and procedural due process guaranteed to him under the Fifth and Fourteenth Amendments of the United States Constitution and the Pennsylvania Constitution, to wit:

A. Plaintiff was deprived of his property including, but not limited to, his employment status as Police Office arbitrarily, capriciously and in bad faith;

B. Plaintiff's suspension and demotion are without cause;

C. Plaintiff's demotion was a matter for which Plaintiff was never given notice and an opportunity to be heard and to the contrary, the meeting of September 18, 1992 was not a hearing

in that Defendants took statements and did not allow Plaintiff's counsel to be present; and

D. The conduct taken by Defendants with regard herein were arbitrary, irrational, unlawful and tainted the grievance procedure followed by Plaintiff in accordance with his contractual rights.

WHEREFORE, Plaintiff requests your Honorable Court to award the following relief:

(a) To order that Plaintiff be reinstated to the position of police officer with East Stroudsburg University Police Force;

(b) To award Plaintiff back pay;

(c) To award Plaintiff reasonable counsel fees;

(d) To award Plaintiff damages in an amount in excess of Fifty thousand ($50,000.00) Dollars due to the abridgement of his constitutional rights as above described; and

(e) Any other relief your Honorable Court deems appropriate under the circumstances.

A JURY TRIAL IS DEMANDED.

NEWMAN, WILLIAMS, MISHKIN,
CORVELEYN, WOLFE & FARERI

By: S/James V. Fareri
James V. Fareri, Esq.
Attorney I.D. #34402

By: S/Maria M. Chesterton
Maria M. Chesterton, Esq.
Attorney I.D. #54911
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
Plaintiff	:	
VS	:	**(JUDGE McCLURE)**
	:	
JAMES E. GILBERT, et al.,	:	
Defendants	:	

ANSWER

The defendants by their attorney answer the complaint as follows:

1. Paragraph 1 is denied. The defendants did not deny plaintiff his rights or breach plaintiff's contract of employment. The defendants' positions are admitted. The rest is a legal conclusion to which no answer is required.

2. Paragraph 2 is a legal conclusion to which no answer is required.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted that this was English's former position and address at the relevant times. Denied that it is his current position or address.

8. Admitted that plaintiff was hired in 1989 as a groundskeeper at ESU. The rest of paragraph 8 is denied.

9. Admitted that plaintiff was made a police officer at ESU effective February 10, 1992, and was placed on probationary status for 6 months from that date. The rest of paragraph 9 is denied.

10. Paragraph 10 is admitted.

11. Denied that defendants were subject to the agreement. The rest of paragraph 11 is admitted.

12. Paragraph 12 is admitted.

13. Paragraph 13 is admitted in part and denied in part. The state police charged plaintiff with possession with intent to deliver a controlled substance, possession of a controlled substance, and criminal conspiracy.

14. Paragraph 14 is admitted.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. Admitted that a hearing was held on September 1, 1992, before District Justice Eyer and he eventually dismissed the charges. The defendants are without knowledge or information sufficient to form a belief as to the rest of paragraph 17.

18. Paragraph 18 is denied.

19. It is admitted that a meeting was held at the office of Gerald S. Levanowitz, Director of Human Resource Management, and Chief of Police Marazas, UPGWA representative Connel, and plaintiff were present. The rest of paragraph 19 is denied.

20. Paragraph 20 is admitted in part and denied in part. Levanowitz did advise plaintiff prior to the meeting that he did not have a right to have his counsel present. Just before the meeting began, Levanowitz indicated that he would permit plaintiff to have his counsel there but that that would require rescheduling the meeting. Plaintiff chose not to reschedule the meeting and to proceed with the meeting without his counsel. The rest is denied.

21. Admitted that plaintiff's attorney was not presented and plaintiff did give a statement which included information about events on August 26, 1989. The rest of Paragraph 21 is denied as stated. Levanowitz told plaintiff that the meeting was to provide plaintiff with an opportunity to provide information on plaintiff's behalf that would assist ESU in making a determination on the suspension.

22. Admitted that Levanowitz notified plaintiff by letter of September 23, 1992, that he was demoted form Police Officer I to Groundskeeper, a position formerly held by plaintiff, effective August 26, 1992. The rest of Paragraph 22 is denied.

23. Admitted that Gilbert's letter of September 24, 1993, stated this.

24. Paragraph 24 is admitted.

25. Paragraph 25 is admitted.

26. Paragraph 26 is admitted.

27. Paragraph 27 is admitted.

28. Paragraph 28 is admitted in part and denied in part. This was not the only reason given.

29. Paragraph 29 is denied as stated.

30. Paragraph 30 is admitted.

31. The defendants are without knowledge or information sufficient to form a belief whether a vice-president was notified.

32. Admitted that no hearing was held on August 27, 1992. However, plaintiff was subsequently given pay as a police officer through September 23, 1992.

33. Paragraph 33 is denied.

34. Paragraph 34 is denied as stated. The grievance was denied by the Bureau of Labor Relations at Step 4. The police report, among other things, was considered. UPGWA requested arbitration where it was free to question the officer on Homar's behalf. The request for arbitration was withdrawn.

35. Paragraph 35 is denied. UPGWA withdrew its request for arbitration.

36. Paragraph 36 is denied.

37. Paragraph 37 is denied.

COUNT I

38. Defendants' responses to paragraphs 1 through 37 are incorporated herein.

39. Paragraph 39 is denied.

40. Paragraph 40 is denied.

COUNT II

41. Defendants' responses to paragraphs 1 through 40 are incorporated herein.

42. Paragraph 42 is denied.

NEW MATTER

43. Each defendant enjoys a qualified immunity from an award of damages, because he is government official performing discretionary acts and the claimed constitutional right was not clearly established at the time defendant is alleged to have acted.

44. The defendants cannot be held liable for any violation of plaintiff's constitutional rights committed by others without defendants' participation or direction.

45. The defendants are immune from suit under Pennsylvania law.

46. The defendants have official immunity.

47. The state employees sued in their official capacity are immune from suit under the Eleventh Amendment.

WHEREFORE, defendants request the court to enter judgment in their favor and award them costs.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

By: S/Michael B. Sutton
MICHAEL B. SUTTON
Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
15th Fl., Strawberry Sq.
Harrisburg, PA 17120
(717)783-1471
DATE: September 7, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
Plaintiff	:	
VS	:	**(JUDGE McCLURE)**
	:	
JAMES E. GILBERT, et al.,	:	
Defendants	:	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants move for summary judgment against the plaintiff under Fed.R.Civ.P. 56. There is no genuine issue as to any material fact. The defendants are entitled to judgment as a matter of law.

WHEREFORE, summary judgment should be entered on behalf of all the defendants.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

By: S/Michael B. Sutton
MICHAEL B. SUTTON
Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
15th Fl., Strawberry Square
Litigation Section
Harrisburg, PA 17120
(717) 783-1471
DATED: January 18, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
Plaintiff	:	
VS	:	**(JUDGE McCLURE)**
	:	
JAMES E. GILBERT, et al.,	:	
Defendants	:	

DEFENDANTS' STATEMENT OF MATERIAL FACTS

Pursuant to Local Rule 7.4, the defendants submit that there is no genuine issue to be tried to the following facts:

1. On August 26, 1992, plaintiff Richard Homar was a Police Officer I employed by East Stroudsburg University (ESU) of the State System of Higher Education, Commonwealth of Pennsylvania.

2. At all relevant times, the defendants were employed by ESU in the following positions: James Gilbert - President; Gerald Levanowitz - Director of Human Resources; David Marazzas - Police Chief; and Curtis English - Vice President.

3. President Gilbert has final authority on questions of suspension and demotion of ESU police officers but had delegated

authority to Levanowitz to act for the president in those areas at this time.

August 26, 1992

4. Homar was arrested in a drug raid at the home of James Crompton in Lake Vahalla, Springfield Township, Monroe County, Pennsylvania.

5. State Trooper Raab and Office of Attorney General Agent Gerrard interviewed Homar at the Swiftwater State Police Station.

6. The State Police notified Marazzas of the arrest and filing of charges and stated Homar was involved in drug matters.

7. State Trooper Mark George filed criminal charges against Homar for possession with intent to deliver a controlled substance (marijuana), possession of a controlled substance (marijuana), and criminal conspiracy with Crompton to violate the controlled substance law (which is a felony).

8. Marazzas and Levanowitz discussed the information from the State Police.

9. Levanowitz decided to suspend Homar without pay immediately.

10. No non-salary benefits were affected.

11. No pre-suspension hearing was held.

12. Homar did not show up for his 4:00 p.m. midnight shift.

August 27, 1992

13. Trooper Raab prepared a supplemental report discussing his interview of Homar the day before.

14. In a telephone call from Homar, Marazzas told Homar he was being suspended.

15. A letter of suspension from Levanowitz to Homar was delivered later to Homar.

16. The letter notified Homar of his suspension pending further investigation and disposition of the criminal charges and explained University action did not have to coincide with disposition of the criminal charges.

September 2, 1992

17. Levanowitz learned the district justice dismissed the criminal charges against Homar on September 1, 1992.

18. Levanowitz felt he needed to do his own investigation of the events before deciding on the discipline of Homar.

September 11, 1992

19. Levanowitz and ESU Police Sergeants Hess and May went to the Swiftwater Station and met with the State Police.

20. The State Police discussed Homar's drug involvement and gave Levanowitz a copy of Raab's August 27, 1992 supplemental report.

21. The report states that during the time Homar was an ESU police officer he was aware of Crompton and a Mr. Habhab's drug dealing and Homar had received marijuana from Habhab.

22. There was no evidence that Homar reported either to police authorities.

September 15, 1992

23. Levanowitz called Homar to set up a meeting on September 18, 1992.

24. Levanowitz told Homar this will be his opportunity to give his version of events from August 26, 1992 through September 1, 1992.

25. Homar was covered by a union contract. Levanowitz explained that Homar may bring his union representative but has no right to bring an attorney.

September 18, 1992

26. A meeting was held in Levanowitz' office with Homar, Union Representative Richard Connell, Levanowitz, Marazzas, and Levanowitz' secretary.

27. At the meeting, Connell relayed that Homar's lawyer (James Fareri) wanted to be present.

28. The union contract does not give an employee a right to a lawyer at the disciplinary hearing.

29. Levanowitz indicated that he would nonetheless permit Homar to have a lawyer present but if Homar's lawyer was present, ESU would want its lawyer to be present and this would result in a delay.

30. Homar or Connell elected to proceed without Homar's lawyer being present.

31. Levanowitz explained that the meeting's purpose was to give Homar a chance to provide any information that would assist ESU in making a determination that would end the suspension and help Homar in presenting his case.

32. Homar explained how he came to Crompton's home and was present in the drug raid.

33. Homar professed innocence.

September 23, 1992

34. Levanowitz decided to demote Homar to groundskeeper, a position held by Homar at ESU before he became a police officer.

35. A demotion letter was sent by Levanowitz to Homar explaining, in part, that:

> This is to inform you that you are to be demoted from your position as a Police Officer I in the Campus Police Department to the position of Groundskeeper, a position which you formerly held. This action is effective retroactive to August 26, 1992, and you are to be given back pay to that date at the rate of pay for a Groundskeeper. You are to

report to work at 7:00 A.M. on September 24, 1992 at the Facilities Management Office. Your new rate of pay as a Groundskeeper will be $552.80 bi-weekly.

This action is being taken as a result of admissions made by yourself to the Pennsylvania State Police on August 26, 1992 that you maintained associations with individuals whom you knew were dealing in large quantities of marijuana and that you obtained marijuana from one of those individuals for your own use. Your actions constitute a clear and flagrant violation of Sections 200 and 200.2 of the East Stroudsburg University Police Department Manual.

As you must know, Police Officers are held accountable for a higher standard of conduct than is the rest of the population. Maintaining these associations and admitted use of a controlled substance is a degradation of that standard that cannot be tolerated.

September 24, 1992

36. Union representatives contacted President Gilbert's office and requested a meeting to discuss the disciplinary action.

37. At 2:00 p.m., Gilbert met with Connell, Union Vice President Pottiger, and Homar and Levanowitz.

38. Levanowitz left most of the meeting, at the union representative's request.

39. The meeting was over in 30-35 minutes.

40. Homar's normal work day as a police officer was 4:00 p.m. - midnight.

41. At the meeting Homar had the September 23, 1993, demotion letter and Trooper Raab's August 27, 1992 Supplemental State Police Report, relied upon by Levanowitz as evidence of Homar's wrongdoing.

42. Homar had notice of the basis for the demotion and the evidence of wrongdoing relied upon by ESU in demoting.

43. Gilbert had authority to reverse Levanowitz' disciplinary action.

44. The union representatives and Homar were given full opportunity to respond to the charges and discipline imposed in the August 23, 1992 letter.

45. Later, Gilbert sent out a letter to Homar upholding the disciplinary decision.

September 30, 1992

46. Homar's union grieved his discipline under the union contract.

47. The union was free to present evidence in support of Homar's position.

November 13, 1992

48. The State System of Higher Education denied the grievance at Step 3.

December 18, 1992

49. The Commonwealth's Office of Labor Relations, Bureau of Labor Relations denied the union's grievance at Step 4.

February 8, 1993

50. The union withdrew its demand for arbitration made following the denial at Step 4.

February 16, 1993

51. Levanowitz directed a retroactive payment to Homar of the difference in groundskeeper salary and Homar's police officer salary for the period of suspension August 26, 1992 to September 24, 1992.

52. Homar does not claim he lost pay or benefits during the period of suspension.

Respectfully submitted,

ERNEST D. PREATE, JR.
Attorney General

By: S/Michael B. Sutton
MICHAEL B. SUTTON
Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

Office of Attorney General
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Litigation Section
Harrisburg, PA 17120
(717) 783-1471
DATED: January 18, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
Plaintiff	:	
VS	:	**(JUDGE McCLURE)**
	:	
JAMES E. GILBERT, et al.,	:	
Defendants	:	

STATEMENT OF JAMES GILBERT

I, JAMES GILBERT, make the following statement on personal knowledge:

1. I am the President of East Stroudsburg University ("ESU").

2. I have the authority to suspend and demote ESU police officers.

3. I have delegated that authority to Gerald Levanowitz.

4. I retain the authority to override the employment decisions of Mr. Levanowitz.

5. On the morning of September 4, 1992, my secretary advised me that Richard Connell wanted to meet me to discuss the Homar discipline.

6. I agreed and had a meeting set for the same day at 2 P.M.

7. Union representative Richard Connell, Union Vice-President David Potteiger, Richard Homar, and I were present for the whole meeting.

8. Potteiger said the purpose of the meeting was to appeal Levanowitz' disciplinary decision of September 23, 1992.

9. Levanowitz was present but then left for most of the meeting at the request of the union member.

10. Homar made a statement.

11. Homar also challenged the accuracy of the state police report by Trooper Raab, dated August 27, 1992.

12. There was no limit on what Connell, Potteiger, or Homar could say or evidence they could present.

13. The meeting lasted 30-35 minutes.

14. I reviewed Levanowitz' correspondence with Homar and Raab's report.

15. I decided Levanowitz' decision was correct and upheld his action.

16. I drafted and sent to Homar a letter dated September 24, 1992, upholding the demotion.

17. I had no bias against Homar.

I, James Gilbert, state that the foregoing is true and correct. Executed on January 25, 1994.

S/James E. Gilbert
JAMES GILBERT

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
	:	
Plaintiff	:	
v.	:	
	:	
JAMES E. GILBERT, et al.,	:	
	:	
Defendants	:	

DEPOSITION OF RICHARD J. HOMAR

[PAGE 3]

RICHARD J. HOMAR, having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SUTTON:

Q. What is your full name?

A. Richard Joseph Homar.

Q. Do you understand that you're under oath today?

A. Yes, I do.

[PAGE 5]

Q. Have you ever been married?

A. No, thank goodness.

Q. What is your educational background?

A. East Stroudsburg High School, that's all. I have graduated from there.

Q. What were your job functions as an East Stroudsburg University Police Officer?

A. Just to keep an eye on the campus, do regular walking around and locking up buildings, making sure--stuff like that, just security.

Q. Were you given any written instructions as to your responsibilities as an officer?

A. No, just a handbook I was given.

Q. Do you still have that handbook?

A. I've moved around once or twice, not that I have on me.

Q. And what is your current employment?

A. I'm still at East Stroudsburg University as a groundskeeper.

Q. Have you applied for any other positions in the last three years?

A. No, I've been with the university since '89.

Q. Have you read the compliant that was filed in this case?

[PAGE 6]

A. Yes, I have.

Q. Are you familiar with the claims there are in the complaint?

A. Yes, I am.

Q. When you applied for the position of police officer did you have to fill out a job application?

A. I'm not sure. At this time I don't remember. I remember I filled out some things for Mr. Levanowitz. That was a while ago, I can't answer on that.

Q. Have you ever been fired from a job?

A. Never.

Q. I'm going to show you what's marked as a police officer application.

A. Um-humm.

Q. Do you remember filling that out?

A. Yes, that is my writing.

Q. And do you remember filling out an employment portion of that application?

A. That is my writing, yes, it is.

Q. Is there--was there anything omitted from that employment section?

A. I don't know.

Q. Were any jobs that you held during that

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[PAGE 7]

Q. Now, when you were suspended from your police officer position do you remember the events that occurred around that time?

[PAGE 8]

A. Yes, I do.

Q. Did you receive any notice of why the university wanted to suspend you?

A. Only of the drugs charges I faced against the State Police.

Q. And how did you receive notice of that?

A. That I was being suspended?

Q. Yes.

A. Chief Marazas and Cindy Bogart came to my address to give me a letter that he had to hand deliver to me.

MR. SUTTON: I'd like to have this marked as Exhibit Number 1.

(Defendant's Deposition Exhibit Number 1 was marked for identification.)

MR. SUTTON: That's the August letter.

Q. Now, I'm showing you an August 27, 1992 letter to you from Jerry Levanowitz, which we've marked as Defendant's Exhibit 1. Is that the letter you received?

A. Yes, it is, Mike.

Q. Had you received any other notice that you were being suspended?

A. That was the only one I received.

[PAGE 9]

Q. Did anyone tell you orally that you were being suspended?

A. Mr. Levanowitz on the phone, but I'm not sure if that was before that. It had to have been after that letter I talked to him on the phone.

Q. Did anyone else tell you that you were being suspended?

A. Only Mr. Levanowitz.

Q. What did Mr. Levanowitz tell you on the phone?

A. Pretty much the same thing, Mike, that is written in that letter.

Q. Were you advised as to what evidence the university was considering in suspending you?

MR. FARERI: At that time?

MR. SUTTON: At that time.

A. Oh, no, I did not--only what the State Police were charging me with, the outcome of those charges.

Q. Were you told at any later date what evidence the university was using against you to suspend you?

A. I'm not sure of the time frame of that but I think I received a certified letter from Mr. Levanowitz with a supplementary report from Trooper Raab.

[PAGE 10]

Q. When did you receive that?

A. Mike, I can't give you a definite date but I'd have to say at least a month later.

Q. Was it before your meeting with Mr. Levanowitz?

A. I can't not answer that. I'm not sure, Mike.

Q. You referred to a letter. Now, I'm going to show you two things, one has been marked Defendant's Exhibit 2 and that's a letter.

(Defendant's Deposition Exhibits Number 2 and 3 were marked for identification.)

A. I'm aware of this one, Mike.

Q. Okay. And also Defendant's Exhibit 3 which is a Supplement State Police Report?

A. I remember this one, too, Mike.

Q. Now you said you received a letter with a State Police report attached to it. Was the letter marked

Defendant's Exhibit 2 dated September 23rd the letter you were referring to or was it a different letter?

A. This one was the one I received, the second one, Mike.

Q. Okay. Defendant's Exhibit 2?

[PAGE 11]

A. Yes.

Q. Was Defendant's Exhibit 3 included with that?

A. No, I think that that was at a later date but I'm not sure.

Q. Did you receive any other letters from the university other than that, Defendant's Exhibits 1 and 2, prior to your meeting with Jerry Levanowitz?

MR. FARERI: Relating to the suspension or demotion?

MR. SUTTON: Relating to the suspense [sic] or demotion.

MR. FARERI: He did receive, obviously, other letters.

A. No, that was it.

Q. Had anyone from the university discussed with you the evidence that was being used against you to suspend you prior to the September 18th, meeting with Jerry Levanowitz?

A. No, Mike.

Q. Did you discuss this at all with your union representative?

MR. SUTTON: What do you mean, by this?

[PAGE 12]

MR. SUTTON: The suspension.

A. Yes.

Q. Who did you speak with?

A. Dave Pottiger, he's the local vice-president for 506.

Q. And what did he tell you?

A. He told me he was going to work on my case for me through a grievance.

Q. What did you tell him?

A. I was supportive of what he was going to help me with.

Q. When was the first time you saw Defendant's Exhibit 3, the State Police Report?

A. After--during about a month after my arrest. I did not see this--

Q. Did you see it at all before your preliminary hearing?

A. No.

Q. And do you remember how you first saw it?

A. Mr. Levanowitz gave it to me.

Q. And do you remember when?

A. No, Mike, I can't give you a specific date.

Q. Would it have been before this September

[PAGE 13]

18th meeting?

A. I'm not sure, Mike.

Q. Did Mr. Levanowitz say anything when he gave you that statement?

A. It was mailed. It was mailed to me through the post office or campus mail, I'm not sure.

Q. So when you say Mr. Levanowitz gave it to you, he didn't hand it to you?

A. No, it was campus mail or through the post office.

Q. Was there anything else that Mr. Levanowitz sent you other than the items marked Defendant's Exhibits 1, 2 and 3 prior to the September 18th meeting?

A. No.

MR. FARERI: Just a point of clarification, he's testified as to Exhibit Number 3 that he's uncertain whether he got that.

MR. SUTTON: Right. I'm just trying to determine if anything else was received from him.

A. No, Mike.

Q. From Mr. Levanowitz, okay. Did you discuss the charges with

[PAGE 14]

Mr. Connell?

MR. FARERI: Which charges?

Q. I'm sorry, did you discuss the suspension and the grounds that were being presented for the suspension with Mr. Connell?

A. Yes, I did.

Q. And what did Mr. Connell tell you?

A. He was supportive of me and he felt that they violated my rights.

Q. Did he indicate to you what the issues were that were going to be addressed at the meeting?

A. No, no one was aware of what was going to be addressed.

MR. FARERI: When you say meeting, you're talking about the meeting with Mr. Levanowitz?

MR. SUTTON: I'm sorry. The September 18th meeting.

A. I'm not sure what was going to happen that day, Mike.

Q. Did you have any opportunity to present your position to the university regarding the suspension and discipline prior to the September 18th meeting?

A. Not at all.

[PAGE 15]

Q. When you came to this September 18th meeting where was that held?

A. Mr. Levanowitz's office.

Q. And do you remember what time of the day it was?

A. Morning, morning hours.

Q. And who was present?

A. David Marazas the Chief, Mr. Levanowitz, myself and Richard Connell.

Q. Was there a secretary present?

A. Yes, I'm sorry, there was a secretary. I don't know who she was. It was Mr. Levanowitz's secretary from what I understand.

Q. Was there anyone else present?

A. No.

Q. How long did the meeting take?

A. Fifteen minutes, somewhere around there.

Q. And what happened at the meeting?

A. Mr. Levanowitz asked me for my side of the story that happened on the 26th.

Q. And what did you tell him?

A. I told him what happened as far as me going to Mr. Crompton's house that morning. Going to his house that morning to the raid by the police, being taken to the barracks, what happened at the

[PAGE 16]

barracks and also what happened at the magistrate's office that day.

Q. Did you discuss at all whether you had possessed marijuana in the past?

A. At that meeting?

Q. At that meeting.

A. No.

Q. Did you discuss at that meeting whether or not you knew Crompton or Habhab were dealing in drugs?

A. No, we did not.

Q. Did Richard Connell speak at all?

A. No, everybody just listened to what I had to say that day.

Q. Now, other than what Mr. Levanowitz said in the beginning, that you could tell your story and you're telling your story, did anyone else saying anything at the meeting?

A. No, everybody was quiet, Mike.

Q. When you were done with telling what had happened, what happened then?

A. The meeting ended.

Q. Now, I'd like you, if you could, tell me basically what your version was that you presented to him, Mr. Levanowitz, at that meeting?

[PAGE 17]

MR. FARERI: You want him to restate what he--

MR. SUTTON: Well, I would like a summary of what he told Mr. Levanowitz.

A. A short summary, Mike, would be fine. Just that that morning I went to Mr. Crompton's house. That he called me to ask me what I was doing that day. I told him that I was going to my mother's to do some yard work for a birthday party for my nephew. I told Jim that I couldn't hang out with him that day that I had something to do, that I'd stop by and say hello. He only lives a block down the road from my mother. I showed up at his house earlier than he expected me to and I helped myself in since the door was opened. I went into his house, his apartment was unlit and I came down to the living room area of his house. I focused my attention on the TV. Jim was sitting on the couch at the time and I was telling

him how I was ready to get going; I was in work clothes to do yard work and I just was in a hurry to get that over with. And I went to turn to his kitchen area to get a glass of water. I heard two men come down the hallway in plain, dark

[PAGE 18]

clothes and I was pushed to the ground.

Q. Now, was this a private home or an apartment building?

A. Mike, he lives in a basement apartment of a single house.

Q. And did you know prior to this raid by the police that Mr. Crompton was dealing in drugs?

A. No, usually I see him, Mr. Crompton, at his place of work.

Q. Okay. Prior to this raid did you think that Mr. Habhab was dealing in drugs?

A. No, I don't — Mike, I don't see him that often.

Q. Had you ever obtained any drugs from Mr. Crompton?

A. No.

Q. Had you ever obtained any drugs from Mr. Habhab?

A. No.

Q. Now, I'm going to go through the demotion and I know we'll be covering a lot of the things that I

asked you about the suspension, but I just want to make sure --

A. All right, Mike.

Q. When was the first time you received

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[PAGE 23]

Q. Now, when you went into the meeting with Mr. Levanowitz on the 18th, were you limited in any way in what you could say?

A. I'm not sure.

Q. Okay. Did they put a time limit on how much time you had to speak?

A. No.

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[PAGE 24]

Q. Now, from the period that you were suspended until you were demoted to groundskeeper were you eventually paid for that period of time?

A. Yes, I was.

Q. And at what rate of pay were you paid?

A. It changed twice, Mike. First Mr. Levanowitz agreed to give me groundskeeper pay from the 26th to the day that he sent me the letter that I had to

show up as a groundskeeper, about a month--from about two months of my arrest, Dave Pottiger, the local, he was able to talk Mr. Levanowitz into giving me police officers rate of

[PAGE 25]

pay for that month of my suspension. And Mr. Levanowitz gave me, again, the difference of the groundskeeper to the police officer in a paycheck.

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[PAGE 37]

Q. As far as you know have you exhausted all your remedies under the union contract?

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[PAGE 38]

A. Yes, I did.

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[PAGE 56]

Q. When you were initially suspended did you receive any notification of the suspension before you received the letter that Chief Marazas delivered?

A. No.

Q. Did you show up to work on the 4 to 12 shift on August 26th?

A. No, I did not.

Q. Why not?

A. They already--I was aware that they already knew of the charges brought against me. I just felt it wasn't--they were going to ask me to go home or something like that.

Q. Did you call in at all to see if you would not be working on the 4 to 12 shift?

A. No.

Q. How did you know that the university

[PAGE 57]

knew about the charges?

A. Trooper Freed told me that he talked to Dave Marazas. This is when I was at the barracks.

Q. Did you have any contact with the university Police the next day on August 27th?

A. I'm not sure. I may have called Dave but I'm not certain of that.

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[PAGE 59]

Q. What was your understanding of the police aspects of the university police officers [sic] job?

A. Just small, you know, keeping an eye on the campus.

Q. Did you carry any weapons as a police officer?

A. Yes, we do.

Q. What kind of weapons?

A. 357's.

Q. Do you carry any other weapons?

A. No, I don't.

Q. Did you, as a university police officer, have access to any other weapons--

A. No.

Q. --to be used?

A. They have, I think, rifles there but I've never used them.

Q. All right. Did you carry your weapon off campus when you were off duty while you were a university police officer?

A. No, it was too bulky. I didn't see a need to.

Q. Did you carry any weapon as an off-duty officer?

[PAGE 60]

A. No.

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[PAGE 61]

Q. Did you feel that the fact that you were involved in a situation where there were drugs present had any-- that resulted in either your demotion or your suspension?

[PAGE 62]

A. It was part of it, yes.

Q. Does the university have a strong policy against drugs?

A. I would believe they do.

August 27, 1992

Mr. Rich Homar
421 King Street
East Stroudsburg, PA 18301

Dear Mr. Homar:

This is to notify you that you are to be suspended without pay, effective immediately on 8/26/92, from your position as a police officer at East Stroudsburg University pending further investigation and disposition of the charges filed against you by the Pennsylvania State Police on 8/26/92.

You will be advised in person or by certified mail of any change in your suspended employment status at the University. Please be advised that any administrative action that may be taken by the University as a result of criminal charges filed against you do [sic] not have to coincide with the disposition of those charges through the legal process.

You have the right to appeal this action through the provisions of the Collective Bargaining Agreement.

Sincerely,

Gerald S. Levanowitz, Director
Human Resource Management

GSL:meo

FOR: Dr. James Gilbert, President

PC: Dr. Curtis English
Chief Marazas
Ms. Donna London
Office Hughes
Mr. Dennis Eck, U.P.G.W.A. Representative
Personnel File

DEF'S EX. #1

200.1 DRINKING ANY KIND OF INTOXICATING LIQUOR WHILE ON DUTY OR COMING ON DUTY UNDER THE INFLUENCE OF INTOXICANTS OR NARCOTICS.

200.2 CONDUCT UNBECOMING TO AN EAST STROUDSBURG UNIVERSITY CAMPUS POLICE OFFICER. DEPARTMENT PERSONNEL WILL CONDUCT THEMSELVES ON AND OFF DUTY, IN A MANNER THAT WILL CREATE A FAVORABLE IMAGE OF THE DEPARTMENT. ANY OFFICER WHOSE ACTIONS CREATE A LOSS OF PUBLIC CONFIDENCE IN THE DEPARTMENT IS GUILTY OF GROSS MISCONDUCT.

200.3 IMMORAL CONDUCT, NEGLECT OF DUTY, VIOLATION OF ANY FEDERAL LAW, STATE LAW, OR LOCAL ORDINANCE, LOUNGING ON POST, INATTENTION TO DUTY, SLEEPING ON DUTY, AND DISORDERLY CONDUCT.

200.4 LEAVING POST OR CAMPUS, OR ABSENCE WITHOUT PERMISSION.

200.5 USING COARSE, PROFANE, OR INSOLENT LANGUAGE.

SECTION 200

1983

RULES OF CONDUCT

PERSONAL CONDUCT:

Department personnel in their contact with the public, are viewed as representatives of East Stroudsburg University. The public image of the East Stroudsburg University Campus Police Department is determined by the actions, conduct, and appearance of its department personnel . . .

The following Rules of Conduct establish standards of behavior and procedures in which all Department personnel must conform. Strict obedience to these rules and regulations and their execution of specific duties, responsibilities, and special orders assigned by your superior, will be expected and required of each officer.

Every member of this department shall be subject to reprimand, suspension or dismissal from the Department and from the service of the College, according to the nature of the offense, for any of the following causes or for violation of any other rules, regulations, or orders of this Department, now in force or that may hereafter be issued, after having been given an opportunity to be heard on his or her own defense . . .

DEF'S EX. #4

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD J. HOMAR,	:	**NO. 3:CV-93-0852**
	:	
Plaintiff	:	
v.	:	
	:	
JAMES E. GILBERT, et al.,	:	
	:	
Defendants	:	

DEPOSITION OF GERALD LEVANOWITZ

[PAGE 4]

Q. Your full name, please?

A. Gerald Stanley Levanowitz.

Q. You're known as Jerry?

A. Yes.

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[PAGE 6]

Q. The numerous letters we have in this case indicate that you are Director of Human Resource Management?

A. Yes.

Q. That's a euphemism for personnel director?

A. The new buzzword.

Q. When did you become the director as opposed to assistant?

A. I came in November '79 as assistant director and I became director in '80. I'm not sure exactly what month.

Q. You've been director since then?

A. Yes.

Q. Have your duties remained constant over that tim period?

A. Pretty much so. They've expanded on a--taken on a few health and safety. And I also--at East Stroudsburg I run the patrol office as well, that's part of Human Resources.

Q. Could you just tell me what the duties of the Director of Human Resource Management would have been during the periods in question and relevance in this case, which would be roughly August '92 up through the present time?

[PAGE 7]

A. Okay. I'll limit my description to as it relates to labor relations and employee relations matters because there's a whole bunch of the other. Essentially--

Q. That's fine.

A. Essentially I am in charge of conduct, labor management meetings with the various staff units on campus, which includes the United Plant Guard

Workers, AFSCME, Pennsylvania Nurse Association and the State College university Professional Association. And I administer those four contracts for the university. And it's under the president, he has designated me as his--I'm his designee for administering any kind of corrective or disciplinary action for infractions of any of those agreements and for sitting down and meeting and discussing and basically negotiating any side letters or any other agreements that we have to locally agree on that alters any of those agreements.

Q. The chief's testimony indicates that you play some role with respect to the police department in terms of disciplining employees, is that correct?

A. Yes it is correct.

Q. Could you describe for me what that role

[PAGE 8]

is?

A. Generally Dave said it. There was just one detail that I would add to what he said, that the counseling is always the responsibility of the department head, a written reprimand--and Dave wasn't too clear on this, but a written reprimand is generally the responsibility of the department head, the dean, director, whatever. Also, the next step being short suspension, one-day, two-days, whatever, three-days suspensions on up to termination. I'm the person responsible for administering those on behalf of the president.

Q. I take it from that testimony that you would be the person who actually would meet out that type of discipline rather than approving what somebody else had already done?

A. Yea, but I administer it because I sign for the President. He's the ultimate decision maker but that's been delegated to me.

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[PAGE 9]

Q. I want to see if I can be educated as to hierarchy. I think I understand it from the chief that the police department is under--was underneath Dr.English?

A. Yes, that's correct.

Q. Except for employee matters, then they would come to you, is that right?

A. Dr. English, it was his role at that time and the provost, serving a dual role now, but his role was Vice-President for Finance and Administration. One of the areas under that segment of our organization is Campus Police. I'm also under the same area. I report to the same vice-president that the chief reports to. It's Dr. English who is presently--currently the president.

Q. If that was a nonpersonnel matter, let's say, the chief had some certain concern of budget. Let's say he needed more money for badges or

[PAGE 10]

something, he would not bring that to--

A. Dr. English.

Q. But if it was an employee matter he would bring that to you?

A. That's correct, yes.

Q. Who is the employee head above you?

A. For contract relations?

Q. Yes.

A. Essentially I'm the delegate of the president to take action, but the vice-president is not cut out of that.

Q. So it would be the vice-president who would--at some of the times here was Dr. English, is that correct?

A. During that time it was, yes.

Q. And then it would have been President Gilbert?

A. Yes.

Q. Can you tell me in 1992 and 1993 at the times that were material to the events in this case were there any guidelines or regulations or laws or a policy and procedure manual that you followed in determining whether employees should be suspended?

A. We have an employee handbook that spells out very briefly a policy that we adhere to that's

[PAGE 11]

called Progressive Discipline. And basically what that outlines is the counseling, verbal warnings, written warnings, suspension, longer suspensions, terminations, it doesn't address--specifically address demotions. But there are--there is a language in the collective bargaining agreements that speaks to demotions.

Q. Was there any--were you aware of any, again, any regulation, wills, policies, laws, regulations, that imposed any specific legal requirements upon you prior to determining that an employee would be suspended for any reason?

A. Yes. Yeah, we've, you know, I've had experience with and I'm not sure you know in reference to policy, but I've had experience with and dealings previously with rights and, you know, notices, hearings, whatever and protocol that would normally be observed.

Q. Was that--in your department was that reduced to writing in any fashion?

A. Well, I guess not in our policy. I have labor relations updates. I subscribe to a couple of labor relations updates, journals that come out and I read those things continually.

Q. Do I take it from your testimony that I

[PAGE 12]

would be correct that the university did not have any written policy or procedures per se that dealt with

what you were to do in terms of making the decision to suspend somebody?

A. The only policy is not a university policy, it's a Commonwealth policy, as the Governor's Codes of Conduct.

Q. Was that in the form of a Governor's Executive Order?

MR. SUTTON: Just for clarification, you're asking other than the Union, correct? Is that right?

MR. FARERI: Yes.

A. Because it is spelled out in there as well.

Q. I believe a copy of that executive order was provided and we won't mark this as an exhibit. Would that be executive order number 1980-18, is that what you're talking about?

A. Yes, and I guess this is the most recent version. They update these from time to time, but this is the one, yes.

Q. That's the one I received from your counsel.

[PAGE 13]

A. Yes.

Q. Is it your testimony that you would be obliged to follow what is stated in here in terms of properly effectuating a suspension of a university employee?

A. I guess, I'm not sure that I would choose the word obliged, but I did refer to this and let it guide my actions somewhat in this case, yes.

Q. We'll ask you some more questions about that later. Let's talk specifically about this particular case. First of all, prior to August 26, 1992 that was the date that Mr. Homar was arrested, did you know Mr. Homar?

A. Yes, I did.

Q. How did you know him?

A. When we were--when we hired him as a laborer. I guess, originally, as a temporary laborer.

Q. So you would know him as one of the employees at the school?

A. As a groundskeeper. His mother works for us also.

Q. Do you know him other than through the university?

[PAGE 14]

A. No.

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[PAGE 16]

that he had smoked marijuana in high school. And that was the first time I knew about it.

Q. But there was no doubt in your mind that the Police, Hess and May and the chief were aware of that before he was hired?

A. That the documents appear to indicate that, yes.

Q. You may want to refer to this, I'm referring to Plaintiff's Exhibit Number 1, which I referred to during the subsequent questions. That is a document prepared by yourself?

A. Yes, it is, yes.

Q. And is that basically a chronological statement of the — some of the actions that occurred pertaining to the disciplining of Mr. Homar?

A. Yes. Yes, it is, yes.

Q. Can you tell me when you prepared that?

A. I'm thinking that it was sometime in October of '92.

Q. Was that prepared from notes that you had made contemporaneously or basically from your recollection?

A. Mostly from memory, but I referred to my desk calendar for appointments, you know, that kind

[PAGE 17]

of thing. And I -- sometime in October kind of realized that hey, you know, some of these things are getting a little fuzzy so you better reduce it, you know, you better try to come up with some kind of a chronological sequence while it's still fresh.

Q. I'm going to ask you some questions particularly about Mr. Homar, when did you discover that he had been arrested?

A. Chief Marazas notified me by phone on the afternoon of that day.

Q. The chief, I think, testified that he had notified you sometime in the later afternoon on that date, would that be fair?

A. Around 3, 3:30 somewhere around there.

Q. Does your first notation there in Exhibit 1, Number 1 under 8-26 indicate that that's what happened?

A. Yes.

Q. Does that note indicate that you received two notifications from the chief that day that he had been arrested?

A. Yes, um-humm.

Q. The second one he indicated that the charge had been established as the three charges you have set forth here?

[PAGE 18]

A. That was the information, yes. The information was given to me on the second phone call that day.

Q. The chief also testified to a meeting that occurred between himself, you and Cindy Bogart at your office, which according to the chief's notes occurred at approximately 3:40 on August 26. Do you remember that?

A. That was after the second phone call, yes.

Q. That's not something that you describe in these notes?

A. No, I didn't, no.

Q. At that meeting the suspension of Mr. Homar was discussed?

A. Yes. I might add the reason that isn't mentioned is because it wasn't on my desk calendar, the things that I was referring to when I made this up, one of them was my desk calendar. That was an impromptu meeting.

Q. Do you remember that meeting?

A. Yes, yes.

Q. What occurred at that meeting?

A. The chief advised me that he had gotten the initial phone call. That it was--and I don't

[PAGE 19]

recall specifically if it was Trooper Freed but Chief Marazas has indicated that that's who it was. That Mr. Homar had been picked up in a narcotics raid. That they had some indication at that time that he may have just been in the wrong place at the wrong time and/or since they knew, I guess, somehow and I'm not sure how, that he was a university Police Officer they gave the chief a courtesy call. Asked him to sit tight for a little while until they could sift things out a little bit more to get back to him. And he got back to them--he indicated to me that he had gotten back to them and that they then told him that

he had--they had established more information and are aware now of the belief that there was deeper involvement and that the charges had been expanded.

Q. That was discussed at this meeting?

A. Yes.

Q. Was it discussed whether or not to suspend Officer Homar?

A. Yes, it was. And the decision to suspend was actually made in consultation, not only, with the chief at that time but with Dr. English and the President.

[PAGE 20]

Q. Was Dr. English at the meeting?

A. No, he was not.

Q. Was the President at the meeting?

A. No, he was not.

Q. At the meeting did you have a recommendation as to what should occur?

A. I really don't remember if I called the President and Dr. English after I met with the chief or--

Q. Did you make a recommendation to Dr. English or the President?

A. Yes, I did.

Q. What was that?

A. To suspend immediately.

Q. With or without pay?

A. Without.

Q. And when you were considering whether or not to do a suspension were you following any set criteria as to things that you were to consider or to do in terms of making a decision whether or not to suspend?

A. No--well, the criteria was as outlined in the Governor's Code of Conduct. And specifically since one charge at that time--and my understanding is that the arraignment had--it was

[PAGE 21]

either occurring at that time or had already occurred and that one of the charges was a felony charge and that's the conspiracy charge. And that the Code of Conduct makes a reference to investigation after suspension in cases where one of the charges is a felony.

Q. So you consulted the Code of Conduct?

A. Yes, and I also made a call to Harrisburg.

Q. Who did you talk to there?

A. The Labor Relations people, the chancellor's office.

Q. Do you remember who it was that you talked to?

A. I really don't. Normally it would be Mary Todaro, but I don't remember.

Q. Are these attorneys or--

A. No, they're labor relations specialists.

Q. Did you get advice from them?

A. Yes, I did.

Q. What was that advice?

A. That was the--concurred with my feeling that I had already arrived at, was that we should suspend. But I don't recall even to tell you the truth, whether it was discussed with Labor

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Relations as to whether it was with or without pay.

Q. You agree with me that at the time that decision was made Mr. Homar was not--prior to you making that decision Mr. Homar was not notified?

A. Yes, that's true. That's correct.

Q. And the letter that was sent, that was then prepared by yourself advising him that he was suspended, it's Plaintiff's Exhibit Number 2?

A. Yes, right.

Q. You wrote that letter?

A. Yes, I did, yes.

Q. Did you have to--before you wrote the letter did anybody assist you with drafting the letter or review the language of the letter?

A. No.

Q. You testified you contacted Dr. English and the President, and did they agree with your suggestion, the course of action?

A. Yes.

Q. Which was to suspend without pay?

A. Yes.

Q. And am I correct based on this letter the reason that Officer Homar was suspended was because of the charges that had been filed by the Pennsylvania State Police on August 26, 1992?

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[PAGE 23]

A. Yes.

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Q. Did you become aware that the charges were dismissed at the preliminary hearing?

A. Yes, I was aware. I guess I read it in the Pocono Record.

Q. It was in the paper the next day?

A. Yes, um-humm.

Q. The preliminary hearing occurred September 1st, 1992. So is it a fair conclusion that on September 2nd you were aware that the charges were dismissed?

A. Um-humm.

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When you became aware the charges had been dismissed the suspension was not lifted, is that correct?

A. That's correct.

Q. Did you make any determination — withdraw that. Did you consider lifting the suspension when the charges were dismissed at the preliminary hearing?

A I considered it. As I indicated in the suspension letter that, you know, the disposition of the disciplinary process did not necessarily have to coincide with the disposition of the criminal charges.

Q. Did you feel, after the charges were dismissed, did you feel that there was still something that had to be investigated?

A. Yes.

Q. What was that?

A. Well, the--what was the date of the magistrate's hearing?

Q. September 1st, 1992.

A. Yeah, September 1st that I really at that point had not gotten anywhere near gathering the information that I needed. I didn't meet with

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the State Police until ten days later. So at that point I really didn't have what I figured that there should be to at least have one-on-one or a face-to-face contact or some kind of contact with the special agent and the State Police which hadn't occurred yet.

Q. What specifically did you want to find out from the State Police?

A. Just the events that took place that day. And Chief Marazas had already indicated to me the sudden shift or the marked change in the attitude of the police from the first phone call to the second. And that they had said at the second phone call that he, Mr. Homar, was a lot more deeply involved in this than they had originally thought.

Q. You also indicate in this note that we just referred to Exhibit Number 1, that you spoke to Assistant District Attorney Curtis Rogers, when was that?

A. I spoke to him on the phone. I really--I couldn't give you a date but it was--it was before the meeting with the--between the magistrate's hearing and the meeting that I had with the State Police.

Q. Did you ask Attorney Rogers whether the

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Commonwealth intended to refile the charges against Mr. Homar?

A. I asked him at one time but I don't recall when I--I don't believe it was at this time, I believe it was later.

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Q. Prior to the meeting of September 18, did you ever issue to Mr. Homar any decision in writing advising him of the matter that you were considering in determining his employment status?

A. Pardon me?

Q. I'll repeat the question. Prior to the meeting of September the 18th, did you ever issue to Mr. Homar any additional letter or memo or any other writing advising him of any issues that you were considering in determining what to do with respect to his employment status?

A. No, I did not.

Q. Am I correct that the only writing that Mr. Homar would have had received from you as of the date of this meeting on September 18, would have

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been the letter advising him that he had been suspended pending further investigation and disposition of the charges filed against him by the Pennsylvania State Police?

A. That was prior to the 18th?

Q. Yes, sir.

A. Yes, sir.

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8-26-92
I was notified by Chief Marazas that ESU Police Officer Richard Homar had been arrested by the State Police in a narcotics raid. The charges at that time were not specifically known but were thought to be possession of a controlled substance (marijuana). Later the same day, Chief Marazas informed me that the charges were now established as (1) Possession with intent to deliver a controlled substance; (2) Possession of a controlled substance and; (3) criminal conspiracy. I also learned that Mr. Homar had been arraigned on these charges and had been released on his own recognizance.

8-27-92
I wrote a suspension letter to Mr. Homar and said letter was hand delivered by Chief Marazas and Officer Bogart.

8-31-92 to 9-11-92
Spoke several times to State Police and SSHE Labor Relations Office on phone and finally set up a meeting with State Police on 9-11-92 at 11:00 A.M. Trooper Freed who was a key person in the arrest and charges was on vacation during this time. Also spoke to Assistant District Attorney Curtis Rogers who stated disbelief that Magistrate Eyer dropped charges. I asked for a copy of transcript of preliminary hearing and was told I would have to get from Attorney Ferrari. I did not follow up on this for obvious reasons.

9-11-92
Met with Trooper George, Trooper Raab and Corporal Sartori. I received a copy of Mr. Homar's statement (copy attached) given to State Police on 8-26-92, the search warrant, the arrest warrant affidavit and the criminal complaint all issued on 8-26-92 by Magistrate Eyer. Troopers George and Raab both are willing to give us their own statement and/or testify at an administrative hearing that Mr. Homar gave them his statement after agreeing to a waiver of rights. Trooper George said that when he entered the Crompton

residence on August 26, 1992, Mr. Homar was seated on a sofa in the living room of the house. When Trooper George yelled State Police and entered the house, Mr. Homar got up and moved quickly toward the kitchen of the residence. Troopers George saw a metallic object flashing/flying from Mr. Homar's direction which he thought might be a gun then he drew his weapon. Trooper George related that the metallic object later turned out to be a metal plate used for processing and cutting marijuana. Trooper George and Raab told me that there were four marijuana "joints" on a coffee table where Mr. Homar had been sitting and one of the joints was half burned and there was a heavy odor of marijuana smoke in the house. They told me that a search of the premises turned up a triple beam scale, five pounds of marijuana and paraphernalia.

9-15-92
I called Mr. Homar and set up a meeting in my office for 9-18-92 at 11:00 A.M. I told Mr. Homar that the purpose of the meeting was to give him an opportunity to tell his version of the events of 8-26-92 through 9-1-92 and to offer any information on his behalf that would be helpful, I told him at that time that he had a right to union representation since this was an administrative hearing but he did not have a right to attendance by legal counsel.

PL'S EX. #1

PL.'S EX. #14
11-5-93

Approx. 1315 hrs. (Aug 16) received a call from Tr. Fredd Swiftwater P.S.P. Had Homar in custody drug raid. No details.

Approx. 1520 Aug 26 contacted Tr. Freed. Stated charging Homar and taking him for arraignment charges possession & possession with intent to deliver.

Approx. 1540-1630 (Aug 26) met with Jerry Levanowitz present Cindy & myself. Determined Homar would be suspended told John May & Bob Conger Homar shows up for work he is to be set home. Can get any personal possessions from HQ.

Aug 27th btw 1215-1253. Homar called told me he was arrested. Asked if he was suspended. Replied yes told him I would deliver by hand a letter to him at 1430 hrs.

Aug. 27th 1456 Cindy and I delivered letter to Homar outside his residence at King St. Told Homar he could pick up any personal possessions, but he is suspended until he hears from us.

EAST STROUDSBURG UNIVERSITY
EAST STROUDSBURG, PA 18301-2999

September 23, 1992

Mr. Richard J. Homar
421 King Street
East Stroudsburg, PA 18301

Dear Mr. Homar:

This is to inform you that you are to be demoted from your position as a Police Officer 1 in the Campus Police Department to the position of Groundskeeper, a position which you formerly held. This actin is effective retroactive to August 26, 1992, and you are to be given back pay to that date at the rate of pay for a Groundskeeper. You are to report work at 7:00 A.M. on September 24, 1992 at the Facilities Management Office. Your new rate of pay as a Groundskeeper will be $552.80 bi-weekly.

This action is being taken as a result of admissions made by yourself to the Pennsylvania State Police on August 26, 1992 that you maintained associations with individuals whom you knew were dealing in large quantities of marijuana and that you obtained marijuana from one of those individuals for your own use. Your actions constitute a clear and flagrant violation of Sections 200 and 200.2 of the East Stroudsburg University Police Department Manual.

As you must know, Police Officers are held accountable for a higher standard of conduct than is the rest of the population. Maintaining these associations and admitted use of a controlled substance is a degradation of that standard that cannot be tolerated.

The services offered through the Employee Assistance Program are available to you. Should you choose to look into this, please contact Ms. Susan McGarry who is the campus coordinator for the program or you can get help by calling the State Employee

Assistance Program at the following toll free number 1-800-692-7459.

You have a right to grieve this action through the applicable provisions of the United Plant Guard Workers of America collective bargaining agreement.

Sincerely,

Gerald S. Levanowitz, Director
Human Resources Management

FOR: James E. Gilbert, President

PC: Dr. Curtis English
Chief David Marazzs
Officer Richard Connell
Mr. Dennis Eck, UPGWA
Ms. Donna London
Personnel File

DEFENDANT'S
EXHIBIT
2
11-5-93